

¹ 5 U.S.C. § 8101 *et seq.*

its relation to her federal employment on March 13, 2019. Appellant attributed her condition to performing repetitive work for the past 28 years.

In a statement dated May 1, 2019, appellant related that her neck symptoms had begun around 2011 and had progressively worsened since March 2019. She further related that returning to full-time employment and performing duties such as casing mail, driving, and delivering mail had aggravated her neck condition.

In a December 19, 2016 work status report, Dr. Lisa Jung Sook Choi-Flores, Board-certified in family practice, noted that appellant had a history of a cervical discectomy. She found that appellant should perform modified employment from December 27, 2016 through June 20, 2017.

In work status reports dated March 17, 2017, Dr. Choi-Flores provided restrictions. On March 31, 2017 she advised that appellant was unable to work from April 1 through 9, 2017.

In a work status report dated September 28, 2017, Dr. Choi-Flores diagnosed cervical radiculopathy, a cervical intervertebral disc herniation with radiculopathy, and bilateral rotator cuff syndrome. She provided work restrictions.

In an April 11, 2018 work status report, Dr. Choi-Flores indicated that appellant was off work from April 12 through 17, 2018 and could perform modified duties through October 11, 2018.

On May 21, 2019 the employing establishment advised that appellant had performed light-duty work for years due primarily to neck and shoulder conditions unrelated to her employment.² It indicated that she had undergone surgery in 2015 and subsequently worked light duty for a number of years.

In a development letter dated May 30, 2019, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a report from her attending physician addressing the causal relationship between any diagnosed condition and factors of her federal employment. It afforded her 30 days to submit the requested evidence.

Thereafter, OWCP received a May 1, 2019 report from Dr. Basimah Khulusi, a Board-certified physiatrist. Dr. Khulusi advised that appellant had worked at the employing establishment since 1991. She noted that she had undergone neck surgery in May 2015. Appellant returned to work full time with restrictions in November 2015, but, in August 2018, her work hours were reduced to two hours per day until March 6, 2019, when she again returned to modified full-time employment. Dr. Khulusi described appellant's employment duties, including casing, sort, pulling, and delivering mail. She noted that appellant had experienced pain in her neck radiating into her hands around 2011 while performing her work duties. Dr. Khulusi reviewed the results of an April 5, 2019 magnetic resonance imaging (MRI) scan. She diagnosed cervical disc disease,

² In an employing establishment routing slip dated May 9, 2019, M.P., a supervisor, advised that appellant had provided medical evidence that she had limitations, but not that it was employment related. F.S., appellant's supervisor since 2016, indicated that she worked in a light-duty status due to neck restrictions.

cervical radiculopathy, cervical disc displacement at C4-5, and a cervical fusion due to the disc displacement. Dr. Khulusi described appellant's repetitive work duties and related, "All these repetitive activities done day-after-day have proven to be above what her body can take status post neck fusion surgery. The sustained contractions of her neck muscles have increased the stresses on the disc above the fusion level at the C4-5 level and caused displacement of that disc, which resulted in mild-to-moderate bilateral neural foraminal stenosis." Dr. Khulusi further found mild-to-moderate bilateral neural foraminal stenosis at C5-6 and severe bilateral neural foraminal stenosis at C6-7. She related, "That means the nerve roots coming out of [appellant's] spine in the neck are running in a compromised space and any increased stresses on the structures of her neck lead to strain of these structures, which aggravates the neurological compromise of the cervical nerve roots that do not have much reserve." Dr. Khulusi provided work restrictions.

In an undated statement received by OWCP on June 26, 2019, appellant related that she had worked full duty from 1991 until 2011 and that, subsequent to that time, had spent approximately two hours per day casing mail. She indicated that she had undergone neck surgery in 2015 and had attached records. Appellant attributed her condition to casing and loading mail.

By decision dated August 12, 2019, OWCP denied appellant's occupational disease claim. It found that the medical evidence was insufficient to establish a medical condition causally related to the accepted employment factors.

Thereafter, OWCP received medical reports from various providers dated January 2017 through March 2019.

An April 5, 2019 MRI scan of the cervical spine revealed a disc bulge, annular fissure, and hypertrophy causing mild-to-moderate bilateral neuroforminal stenosis at C4-5, an anterior fusion with mild-to-moderate bilateral neuroforminal stenosis at C5-6, and an anterior fusion with severe bilateral neuroforaminal stenosis at C6-7.

In a report dated November 7, 2019, Dr. James T. Tran, a Board-certified neurosurgeon, described appellant's work history and complaints of neck pain beginning in 2011 while performing her work duties. He noted that she underwent neck surgery in May 2015. Dr. Tran indicated that appellant had continued complaints of neck pain for which she received steroid injections. He diagnosed connective tissue stenosis, intervertebral disc stenosis, and osseous stenosis of the neural cervical canal region. Dr. Tran found that appellant had cervical radiculopathy from stenosis at C4-5 following a discectomy and fusion in 2015. He opined that the diagnosed conditions were employment related. Dr. Tran related that appellant's turning and extending of her head lifting mail and retrieving satchels exerted force on her cervical spine causing annular tears at C4-5, which allowed protrusion of the nucleus pulposus into the spinal canal and compressed the nerve roots at C4-5. He further found that her frequent neck movements sorting mail and retrieving satchels caused the "cervical superior and inferior facet joints at each cervical spinal level at C4-5 to disengage and separate" resulting in tears in the annulus fibrosus extruding into the C4-5 cervical canal at C4-5.

On January 30, 2020 Dr. Khulusi advised that she had reviewed OWCP's August 12, 2019 decision. She opined that OWCP should have accepted as employment-related connective tissue stenosis, intervertebral disc stenosis, and osseous stenosis of the neural canal of the cervical region.

On March 3, 2020 appellant requested reconsideration.

By decision dated June 1, 2020, OWCP denied modification of its August 12, 2019 decision.

In a report dated November 15, 2020, Dr. Khulusi indicated that she had reviewed OWCP's June 1, 2020 decision. She denied finding that appellant's condition resulted from work duties performed beginning March 19, 2019 or that employment after that date caused her condition. Dr. Khulusi advised that her work duties, including casing mail for two hours per day, had aggravated her neck condition. She noted that appellant's condition had significantly worsened from November 2016 until April 2019, as shown by MRI scan. Dr. Khulusi asserted that the diagnoses of cervical disc disease, cervical disc displacement, cervical radiculopathy, and status post neck fusion should be accepted as employment related.

On November 19, 2020 appellant requested reconsideration.

By decision dated February 16, 2021, OWCP denied modification of its June 1, 2020 decision.

Thereafter, OWCP received medical reports dated from 2017 onward, which documented appellant's treatment for a variety of conditions. On September 28, 2017 Dr. Choi-Flores evaluated appellant for pain in her neck, back, and left shoulder. She diagnosed cervical radiculopathy and disc disease, bilateral rotator cuff syndrome, and arthritis of the bilateral sacroiliac joints. In a progress report dated August 18, 2018, Dr. Mohamed Asjam Simjee, who specializes in family medicine, diagnosed cervical disc disease and chronic neck pain.

In a report dated June 24, 2021, Dr. Khulusi advised that she had provided medical records from 2011 to 2016. She indicated that a neck fusion caused a change in the distribution of forces in the vertebrae. Dr. Khulusi related that appellant's full-time work was "detrimental to her neck condition after fusion and caused excessive forces to concentrate on the disc levels above and below her fusion and that caused her discs to be displaced as per the results of the MRI [scan] dated April 5, 2019 causing her to suffer significant neural foraminal stenosis that happened very quickly within a period of two and a half years." She again asked that OWCP accepted as employment related cervical disc disease, cervical disc displacement, cervical radiculopathy, and status post neck fusion.

On June 22, 2021 appellant requested reconsideration.

By decision dated August 4, 2021, OWCP denied modification of its February 16, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United

³ *Supra* note 2.

States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,⁴ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

In an occupational disease claim, appellant's burden of proof requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

In a May 1, 2019 report, Dr. Khulusi discussed appellant's employment history and her history of neck surgery in May 2015. She described in detail appellant's work duties and reviewed the results of an April 5, 2019 MRI scan. Dr. Khulusi diagnosed cervical disc disease, cervical radiculopathy, status post-neck fusion, cervical disc displacement at C4-5, and a cervical fusion due to the disc displacement. She opined that appellant's work duties after her cervical fusion had caused increased stress above the fusion level resulting in bilateral neural foraminal cervical

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *W.M.*, Docket No. 14-1853 (issued May 13, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.G.*, Docket No. 21-0879 (issued November 19, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *Id.*

stenosis. In a November 15, 2020 report, she related that MRI scans supported that appellant's condition had significantly deteriorated between November 2016 and April 2019. Dr. Khulusi opined that appellant's work duties, including two hours per day of casing mail, had aggravated her neck condition. On June 24, 2021 she explained that her neck fusion had changed the distribution of forces in the vertebrae, and that her work duties had caused excessive force above and below the area of the fusion, resulting in neural foraminal stenosis. Dr. Khulusi diagnosed cervical disc disease, cervical disc displacement, cervical radiculopathy, and status post neck fusion and found that the diagnosed conditions were employment related.

In a report dated November 7, 2019, Dr. Tran discussed appellant's history of neck pain beginning in 2011 and neck surgery in May 2015. He diagnosed connective tissue stenosis, intervertebral disc stenosis, and osseous stenosis of the neural cervical canal region, which he found were related to her employment. Dr. Tran explained that appellant's turning and extending of her head lifting mail and retrieving satchels exerted force on her cervical spine causing annular tears at C4-5, which allowed protrusion of the nucleus pulposus into the spinal canal and compressed the nerve roots at C4-5. He further found that frequent neck movement sorting mail and retrieving satchels resulted in tears in the annulus fibrosus due to cervical facet joint force.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹¹ OWCP has an obligation to see that justice is done.¹²

The Board finds that, while the reports from Dr. Khulusi and Dr. Tran are insufficient to meet appellant's burden of proof, they raise an uncontroverted inference of causal relation between her claimed cervical conditions and the accepted factors of her federal employment. Both physicians provided a comprehensive understanding of the medical record and appellant's work duties, and a pathophysiological explanation as to how the mechanism of the accepted employment factors were sufficient to cause the diagnosed conditions. The opinions of Dr. Khulusi and Dr. Tran are not contradicted by any substantial medical factual evidence of record. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹³ Dr. Khulusi and Dr. Tran's opinions are rationalized and are, therefore, sufficient to require further development to determine whether appellant sustained a cervical condition caused or aggravated by the accepted employment factors.¹⁴

¹¹ *E.G.*, Docket No. 19-1296 (issued December 19, 2019); *A.P.*, Docket No. 17-813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹² *J.N.*, Docket No. 20-1287 (issued October 26, 2021).

¹³ *L.P.*, Docket No. 20-0434 (issued February 2, 2021); *W.M.*, Docket No. 17-1244 (issued November 7, 2017).

¹⁴ *See E.G.*, Docket No. 20-1184 (issued March 1, 2021); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

On remand, OWCP shall refer appellant, along with the case record, and a statement of accepted facts to a specialist in the appropriate field of medicine for a second opinion examination and an evaluation regarding whether she sustained a cervical condition caused or aggravated by the accepted factors of her employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Khulusi and Dr. Tran. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 2, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board